

September 13, 2010

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VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Ms. Alison Hess
Remedial Project Manager
U.S. Environmental Protection Agency, Region II
Emergency & Remedial Response Division
290 Broadway, 19th Floor
New York, NY 10007-1866

RE: Standard Chlorine Chemical Co., Inc. Superfund Site, Kearny, Hudson County, New Jersey

Dear Ms. Hess:

The companies on the attached list (the "Companies") have received the United States Environmental Protection Agency's ("USEPA") invitation to make a good faith offer to enter into an Administrative Order on Consent ("AOC") to perform a Remedial Investigation and Feasibility Study ("RI/FS") and to reimburse certain response costs incurred for the Standard Chlorine Chemical Site in Kearny, New Jersey (the "Site" or "SCCC Site"). Although I do not function as "Group" counsel, I have been asked to prepare this letter reflecting the response of the Companies to the USEPA's letter of July 9, 2010 ("Notice Letter").

At the outset, the Companies have strong concerns about the approach the United States has formulated to move forward with the RI/FS at the Site. Attached to the Notice is a typical "model form" AOC and RI/FS Statement of Work ("SOW") that USEPA has provided "to assist [the Companies] in developing a 'good faith offer'". While such documents are typically suitable as the starting point for many Superfund Sites at the early RI/FS Stage, USEPA is well aware that the circumstances at the SCCC Site are anything but typical. As you know, the Site for many years has been the subject of numerous investigatory and remedial activities through involvement of many of the Companies on Exhibit A under the supervision of the New Jersey Department of Environmental Protection ("NJDEP"). An extensive remedial history was thus developed for the Site prior to the time USEPA chose to involve itself at the Site. Indeed, despite that involvement, various aspects of work at the Site continue under NJDEP oversight. The principal remedial investigation and interim remedial activities that have been implemented at the Site are set forth in the table below:



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PRINCIPAL HISTORICAL RI AND IRM ACTIVITIES SCCC SITE KEARNY, NEW JERSEY		
Date	Activity	Principal Documents
1983-1984	Hydrogeologic Investigation	<i>Hydrogeologic Investigation, Standard Chlorine Chemical Company, Inc., Kearny, New Jersey (Weston, January 1984).</i>
1985	Phase II Dioxin Investigation	<i>Phase II Dioxin Site Investigation, Final Report, Standard Chlorine Chemical Company, Inc., Kearny, New Jersey, for NJDEP/EPA (E.C. Jordan, Inc. 1985).</i>
1985-1988	Stage 1, 2, and 3 Dioxin Investigations	<i>Sampling and Analysis of Potentially Dioxin-Contaminated Materials in Waste Lagoons, Standard Chlorine Chemical Company, Stage I Analysis Report (Weston, September 1987); and Sampling and Analysis of Potentially Dioxin-Contaminated Materials in Waste Lagoons, Stage II and III (Weston, May 1988).</i>
1989-1990	Interim Remedial Measures	<i>Draft Interim Measures Work Plan, Standard Chlorine Chemical Co., Inc. Kearny, New Jersey (Weston, November 1989); and Final IRM Workplan (Weston, February 1990).</i>
1991	Chromium IRMs	<i>Interim Remedial Measures Work Plan (French & Parrello, 1991).</i>
1990-1993	Remedial Investigation and Supplemental Remedial Investigation	<i>Remedial Investigation Work Plan for the Standard Chlorine Chemical Company, Kearny, New Jersey (Weston, May 1990) as modified by August 1990 addendum; Supplemental Workplan, RI (Weston, August 1992); Draft Remedial Investigation for the Standard Chlorine Chemical Company, Inc. and Standard Naphthalene Products Inc. Properties, Kearny, New Jersey (Weston, May 1993).</i>

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<p align="center">PRINCIPAL HISTORICAL RI AND IRM ACTIVITIES SCCC SITE KEARNY, NEW JERSEY</p>		
Date	Activity	Principal Documents
1995-1997	Focused Remedial Investigation	<i>Focused Remedial Investigation (FRI) Work Plan, Standard Chlorine Chemical Company Inc. and Standard Naphthalene Products Inc. Site, Kearny, New Jersey (ERM, December 1995);</i> <i>Focused Remedial Investigation (FRI) Report, Standard Chlorine Chemical Company, Inc. and Standard Naphthalene Products, Inc. Site, Kearny, New Jersey (ERM, Inc., January 1997).</i>
1996	Production Well Closure	<i>Workplan for Production Well Closure (ERM., December 1996).</i>
1997	Proposed Remedial Action Plan	<i>Proposed Remedial Action Plan, Standard Chlorine Chemical Co. Inc. and Standard Naphthalene Products, Inc. Site, Kearny, New Jersey (ERM January 1997).</i>
1997-1999	Supplemental Remedial Investigation	<i>Supplemental Remedial Investigation Report, Standard Chlorine Chemical Company, Kearny, New Jersey (Key Environmental, Inc., April 1999).</i>
1999	Remedial Action Work Plan	<i>Conceptual Remedial Action Workplan, Standard Chlorine Chemical Company, Inc., Kearny, New Jersey (Enviro-Sciences, Inc., October 1999).</i>
2000	Remedial Action, Containerized Materials, SCCC Site	<i>Remedial Action Workplan, Standard Chlorine Chemical Company Site (Enviro-Sciences, Inc., June 5, 2000); Letter to NJDEP(Maria Franco-Spera) re: Characterization of Containerized Materials (Enviro-Sciences, Inc., October 23, 2000).</i>
2000	Soil/Sediment Sampling and Analysis	<i>Letter to NJDEP (Maria-Franco-Spera) (Enviro-Sciences, Inc., October 23, 2000).</i>
2000	Septic Tank Closure (NJPDES-DGW) IRM,	<i>Letter to NJDEP (Kevin Marlowe) (Enviro-Sciences, Inc., August, 2000).</i>
2000	Remedial Action, Baseline Ecological Evaluation, IRM for Northern Outfall	<i>Remedial Action Workplan, Standard Chlorine Chemical Company, Inc., Kearny, New Jersey (Enviro-Sciences, Inc., November 2000).</i>
2002	Surface Water and Sediment Sampling	<i>Sampling Report for the Standard Chlorine Site (United States Environmental Protection Agency, 2002).</i>

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PRINCIPAL HISTORICAL RI AND IRM ACTIVITIES SCCC SITE KEARNY, NEW JERSEY		
Date	Activity	Principal Documents
2003	Interim Remedial Measures	<i>Interim Remedial Measures Workplan, Standard Chlorine Chemical Co., Inc., Kearny, New Jersey (Key Environmental, Inc., July 2003).</i>
2004	Interim Response Action	<i>Draft Interim Response Action Workplan (IRA W) – Standard Chlorine Chemical Company Site and Diamond Site (Key Environmental, Inc., March 2004).</i>
2004	Lead and Asbestos Buildings Survey	<i>Pre-Demolition Asbestos and Lead Building Surveys, Standard Chlorine Chemical Company Site and Diamond Site (Omega Environmental Services, Inc., March 2004).</i>
2004	Asbestos Management and Building Demolition	<i>Workplan for Phase I Asbestos Management and Select Building Demolition, SCCC Site (Key Environmental, Inc., June 2004).</i>
2004	Wetlands Delineation	<i>Wetlands Delineation Report for Standard Chlorine Chemical Company and Former Diamond Sites (Princeton Hydrologic, L.L.C., September 2004).</i>
2004	Pre-Design Investigation Workplan	<i>Pre-Design Investigation Workplan, Volume 1 of 2, Standard Chlorine Chemical Company Site and Former Diamond Site (Key Environmental, Inc., October 2004).</i>
2004	Solidification Treatability Study Workplan	<i>Solidification Treatability Study Work Plan, Standard Chlorine Chemical Company Site (Key Environmental, Inc., October 2004).</i>
2004	Aerial Topographic Survey	<i>Topographic Base Map (Air Survey, Dulles, VA. April 14, 2001).</i>
2005	Asbestos Removal, Waste Classification, Demolition, Disposal	<i>Work Plan for Dilapidated Non-Process Building Demolition, Standard Naphthalene Products Co., Inc., Finished Goods Area (Key Environmental, August 2005).</i>
2005	Scope of Work – Supplemental RI	<i>Electronic Mail to NJDEP (Gary Lipsius) (Langan Engineering and Environmental Services, Inc., July 21, 2005).</i>
2005	Pre-Design Investigation Workplan	<i>Pre-Design Investigation Workplan, Volume 2 of 2, Appendices A-D, Standard Chlorine Chemical Company Site and Former Diamond Site (Key Environmental, Inc., December 2005).</i>

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PRINCIPAL HISTORICAL RI AND IRM ACTIVITIES SCCC SITE KEARNY, NEW JERSEY		
Date	Activity	Principal Documents
2006	Interim Response Action Work Plan	<i>Interim Response Action Workplan (IRA W).</i> (Key Environmental, Inc. June 2006.)
2006	Numerical Groundwater Modeling	<i>Groundwater Flow and Transport Model and Barrier Wall Evaluation, Standard Chlorine Chemical Company, Inc. Site and Diamond Shamrock Site</i> (GeoTrans, Inc., June 23, 2006)
2006	Request for Use of USEPA Area of Contamination Policy	Letter to NJDEP (<i>Chris Kanakis and Frank Faranca</i>) re: Use of USEPA Area of Containment Policy (Key Environmental, Inc., July 3, 2006).
2006	Proposal for Use of EPA Area of Contamination (AOC) Policy	<i>AOC Proposal for Standard Chlorine Chemical Co., Inc. Site "SCC Site"</i> (Langan, October 2006)
2006	Vault Content Sampling /Waste Classification Determination	Letter to NJDEP with attached "Request for Waste Classification Determination (Form HWM-009)" (Langan Engineering and Environmental Services, Inc., October 25, 2006).
2007	Interim Response Action Workplan	<i>Interim Response Action Workplan (IRA W) for SCCC Site and Diamond Sites</i> (Key Environmental, Inc., May 2007).
2007	Interim Response Action Workplan Addendum	<i>Interim Response Action Workplan (IRA W) Addendum, Responses to NOV Issues and Proposed Revisions, Standard Chlorine Chemical Company Site and Diamond Site</i> (Key Environmental, Inc., November 16, 2007).
2008	Phase II Supplemental Remedial Investigation Workplan	<i>Phase II Supplemental Remedial Investigation Workplan , Standard Chlorine Chemical Company Site</i> (Key Environmental, Inc., March 2008).
2008	Sampling and Analysis Plan for Containerized Materials	<i>Site-Specific Sampling and Analysis Plan for Containerized Materials, Standard Chlorine Chemical Company Site, Kearny, New Jersey</i> (Key Environmental, Inc., April 2008)
2008	Resubmittal of Waste Classification Request For Vault Contents	<i>Waste Classification Request, Standard Naphthalene Products Co., Inc. Property, Standard Chlorine Chemical Co., Inc. Site, Kearny, New Jersey</i> (Key Environmental, Inc. April 2008)

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PRINCIPAL HISTORICAL RI AND IRM ACTIVITIES SCCC SITE KEARNY, NEW JERSEY		
Date	Activity	Principal Documents
2008	Additional Information Pertaining to the Waste Classification Request For Vault Contents	<i>Waste Classification Request – Vault Contents Standard Naphthalene Products Co., Inc. (SNP) Property, Standard Chlorine Chemical Co., Inc. Site, Kearny, New Jersey (Key Environmental, Inc. June 2008)</i>
2008	Removal of the Vault Contents	<i>Removal of Vault Contents, Standard Chlorine Chemical Company (SCCC) Site (Key Environmental, Inc. August 2008)</i>
2008	Final Interim Response Action	<i>Response Action Workplan (IRA W), Standard Chlorine Chemical Company Site and Diamond Site approved by NJDEP (Key Environmental, Inc., October 17, 2008).</i>
2009 – 2010	Like vs. Like Demonstration	<i>Like vs. Like Demonstration in Support of the Use of the EPA AOC Policy (Key Environmental, Inc., June 11, 2009 and approved by NJDEP March 26, 2010).</i>
2009 – 2010	Waste Classification Requests	<i>October 8, 2009 Waste Classification Requests for South Ditch Soils, Near Shore River Sediments, East Lagoon Solids, West Lagoon Solids, Barrier Wall Spoils, Pipe Run Spoils, DNAPL, Transformer Pad Concrete and Soils, approved by NJDEP at various dates.</i>
2009 – 2010	Final Interim Response Action, Addendum No. 1	<i>Final Interim Response Action, Addendum No. 1, Standard Chlorine Chemical Company Site and Diamond Site approved by NJDEP (Key Environmental, Inc., March 25, 2009, revised June 28, 2010, approved by NJDEP June 18, 2010).</i>

Among the activities on the foregoing table you will note reference to an Interim Response (“IRA”) that is currently underway at the Site in coordination with implementation at the neighboring property known as the former Diamond Site. The IRA was approved by the USEPA earlier this year through submission and approval of an Environmental Engineering and Cost Analysis (“EE/CA”). Although denominated an “interim” remedial action, the components of the IRA bear all of the elements of a final remedy. The IRA components include:

- A sheet pile wall along the Site’s river frontage;

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- A fully enclosing cement bentonite slurry wall;
- Hydraulic control pumping wells;
- A DNAPL recovery system;
- A groundwater/DNAPL treatment system;
- Removal/consolidation of certain soils and near shore sediments;
- Surface covers over consolidation areas;
- A stormwater management system; and
- Near-shore wetland restoration.

Field work for the IRA is now underway with NJDEP oversight. In light of that activity and the extensive investigatory efforts already implemented at the Site certain of the Companies prepared a Supplemental Remedial Investigation, originally for submission to NJDEP, that detailed the limited additional objectives that need to be met at the Site. Results and reports for of all of the prior investigation and remediation efforts at the Site were provided to USEPA when it issued its 104(e) requests at the Site. Certain of the Companies also met with USEPA in January 2009 to review the historical context for the Site. Finally, earlier this year, copies of the Supplemental Remedial Investigation Report were provided for USEPA comment which has yet to be supplied. Against this extensive record of investigation and remediation implemented at the Site it was disappointing to the Companies to receive the usual "model" AOC and SOW for a typical CERCLA RI/FS, as if this Site had never been the subject of any prior investigation or remediation.

The bottom line here is that the typical CERCLA RI/FS process needs to be streamlined in reliance on the extensive remedial record that exists for this Site. To do otherwise would be an enormous waste of time, effort and money. As a starting point to streamlining the process, the Companies remain interested to receive USEPA's comments to the Supplemental Remedial Investigation previously provided for comment.

A second point of concern for the Companies is the continued focus by USEPA on the entities that have historically cooperated to implement remedial actions at the Site to the virtual exclusion of identifying and recruiting other potentially responsible parties ("PRPs") to this effort. While the Companies recognize that USEPA has not wholly ignored the process of finding and naming other PRPs, it appears that most of its investigative effort, through CERCLA 104(e) and otherwise, has largely targeted parties already at the table. The inclusion of all relevant PRPs must be a continued objective that

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the agency pursues with vigor. Moreover, the refusal of the USEPA to utilize the special notice procedures of CERCLA section 122(e) is quite troubling. Without explanation, the United States concludes that such an approach would neither "facilitate agreement" nor "expedite the RI/FS for the Site". That conclusion is patently inaccurate given the historic remediation and cooperation of the majority of the Notice Letter recipients. At a minimum, CERCLA's special notice procedures would provide an opportunity for locating additional PRPs and developing an agreed approach to the Site. The decision to focus on a few companies to the exclusion of others and to ignore established methods for facilitating agreement under section 122(e) has very real consequences. Completing an entire RI/FS is a substantial undertaking which entails substantial costs, even where, as here, the RI/FS would be a more focused and streamlined effort. In addition, even when there are large numbers of PRPs, there is often trouble forming and organizing a group to fund a significant response action equitably and to perform it effectively. The USEPA appears simply to exacerbate that condition through the unrealistic deadlines it has imposed in this matter as well as its refusal to consider other creative alternative solutions to the perceived problems at the Site. This is the situation that the undersigned Companies are confronting. Our concerns are further reflected in our response below.

Notwithstanding these reservations, the Companies tender a good faith offer as follows:

1. The Companies are willing to conduct an RI/FS subject to all of the terms set forth in this letter.
2. EPA's draft AOC and corresponding SOW were transmitted by USEPA with the Notice Letter dated July 11. We understand that the draft AOC is a "model" document, but modifications will be required. By way of example, and without limitation, the AOC will require a significant reduction in stipulated penalties, the expansion of the various deadlines USEPA proposes in the AOC and SOW and consideration on the matters of past and future response costs. Likewise, the SOW will need to be tailored to reflect activities and investigations already implemented at the Site. Finally, we believe work at this site provides opportunity for cooperation in use of USEPA's Job Training Initiative ("JTI") Program. The Companies thus believe that all parties would benefit from a face-to-face meeting to discuss the path forward for these documents prior to negotiating terms so that both can properly reflect reliance on the existing remedial record, and appropriate planning for use of the JTI program.
3. The Companies have demonstrated the requisite technical capability to carry out the RI/FS as reflected in the successful design and implementation of other remedial activities at the Site as identified above. The Companies will use these and other technical contacts to select a contractor qualified to perform the RI/FS.

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4. The Companies have demonstrated the requisite capability to finance the RI/FS as reflected in the successful funding of remedial design and implementation of other remedial activities at the Site as identified above, including without limitation the IRA and the recent AOC for Removal Action entered with USEPA.
5. The Companies are willing to negotiate terms in the AOC to reimburse USEPA for costs incurred in overseeing implementation of the RI/FS.
6. The Companies are willing to negotiate terms in the AOC addressing USEPA's demand for costs incurred in connection with federal response actions at the Site.
7. Individual companies may be represented by specific individuals in the course of these negotiations. The undersigned, however, for convenience, will coordinate communications among EPA and the Companies during these negotiations.

This good faith offer is further expressly conditional upon the following:

- Negotiation of a final AOC with (a) terms acceptable to each Company individually as well as USEPA and (b) participation under such an AOC by a sufficient number of the Companies.
- Completion of negotiations among the Companies for a funding mechanism to perform the RI/FS.
- A commitment by USEPA in the AOC or otherwise to review information provided by the Companies and to name additional parties as PRPs at the earliest possible time. The Companies appreciate USEPA's willingness – as previously expressed – to review evidence identifying other parties, but much of that evidence has now been in USEPA's hands for over two years. Therefore, we seek assurances that, where sufficient and credible information is provided, EPA will name others as PRPs, encourage them to participate in the RI/FS, and amend the AOC to include such additional parties as soon as they are identified.
- The provision of Orphan Share credit or other appropriate cost forgiveness, in light of Standard Chlorine Chemical Co., Inc.'s financial circumstances.

By providing this good faith offer, each Company is not, and shall not be construed as, admitting in any way that it is liable or responsible for costs or damages of any sort incurred by USEPA or others relating to the Site. Each Company individually, and the Companies collectively, expressly reserve all rights and defenses at law or equity that may apply. Without limitation of the foregoing, each Company reiterates any and all points made by it in its 104(e) response or otherwise, that it does not have liability for

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conditions at the Site and that USEPA's identification of it as a PRP under CERCLA is inappropriate.

If you have questions about this good faith offer or would like to discuss it at any time, please contact me at your convenience.

Sincerely yours,



Lori A. Mills

cc: **Via Electronic Mail and Federal Express**
Sarah Flanagan
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Representatives for Parties on Attachment A (Via Electronic Mail Only)

Enclosure: Attachment A – List of Companies

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ATTACHMENT A
STANDARD CHLORINE CHEMICAL SITE, KEARNY, NEW JERSEY
LIST OF COMPANIES SUBMITTING GOOD FAITH OFFER
TO PERFORM REMEDIAL INVESTIGATION/FEASIBILITY STUDY

Beazer East, Inc.

Cooper Industries, LLC

Occidental Chemical Corporation

Standard Chlorine Chemical Co., Inc. on its own behalf

and on behalf of its wholly-owned subsidiary

Standard Naphthalene Products, Inc.¹

¹ As current owners of the parcels comprising the Site.